IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.1508 of 2004
and WAMP.No.2805 of 2004

State Bank of India
Local Head Office
21 Rajaji Salai
Chennai 600 001
rep. By the
Assistant General Manager
(Pers. & HRD) .. Appellant

vs.

1.The Presiding Officer
Industrial Tribunal
Madras.

2.K. Ibrahim .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of His Lordship Mr. Justice V. Kanagaraj made in W.P.No.15285 of 1997 dated 04.12.2003 to issue a writ of certiorari calling for the records of the 1st respondent in ID.No.77/92 and quash the Order dated 7.2.97.

For appellant : Mr. V. Karthick
for M/s. T.S. Gopalan & Co.

For respondents : Mr. K.V. Ananthakrishnan for R.2

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JUDGMENT
(Judgement of the Court delivered by P. SATHASIVAM,J.)

The writ appeal is directed against the order of the learned single Judge dated 04.12.2003 made in W.P.No.15285 of 1997, in and by which the learned Judge, after accepting the conclusion arrived at by the Industrial Tribunal on the preliminary issue, viz., that the enquiry finding being ex-parte has to be held as vitiated, confirmed the order of the Industrial Tribunal dated 07.02.1997 made in I.D.No.77 of 1992, and dismissed the writ petition filed by the Management, i.e., State Bank of India.

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2. For convenience, we shall refer the parties, as arrayed before the learned single Judge.

3. The case of the petitioner/Bank is as follows:

(a) The Guindy Branch of the petitioner Bank, opened an Extension Counter in the Defence Officers Training School (OTS) at St. Thomas Mount, Chennai. The said Extension Counter used to work on Mondays, Wednesdays and Fridays between 12.00 noon and 2.00 p.m. The staff of the Guindy Branch will be deployed to the Extension Counter for attending to the work. Once the transactions are over, they would return to the Branch and account for the transactions of the day. The second respondent was working as a Cashier in the Guindy Branch and he used to go to the above said Extension Counter. It came to the knowledge of the petitioner Bank that between 26.10.1987 and 03.02.1988, the second respondent, while working at the Extension Counter, in respect of four transactions, he had received the cash and acknowledged the remittance in the counter-foil, but intentionally omitted to put the transactions through the cash scroll and failed to account for the same in the Books of Accounts of the Branch and thereby appropriated the amount for himself.

(b) On 09.04.1988, a charge sheet was issued to the second respondent for his fraudulent acts. Subsequently, it came to the light that in another transaction, i.e., on 04.11.1987, when the second respondent was working as a Cashier in the O.T.S. Extension Counter, he had received a sum of Rs.1,800/-, which he failed to bring into the account of the Bank and appropriated the amount for himself. For this, another charge sheet dated 14.05.1998 was issued to him. As the explanation offered by the second respondent to the two charge sheets was not satisfactory, he was asked to appear for an enquiry.

(c) The enquiry against the second respondent was first posted on 22.08.1988. On that day, he represented that he was going to be defended by the SBI Staff Union and he had to make arrangement for the same, and he should be given time; hence, the next sitting was fixed on 29.08.1988. On that date, he was furnished with copies of documents to be relied on in support of the charges and on the request of the second respondent, the enquiry was adjourned to 12.09.1988. On 12.09.1988, the second respondent informed the Enquiry Officer that the Union representative was not available to defend him in the enquiry and sought permission to engage a lawyer, but his request was turned down and thereafter, the second respondent agreed to carry on with the enquiry by himself. Then Sri.M. Kasi, Scientific Assistant, Forensic Science Department was examined. After his chief examination was over, when the second respondent was asked to cross examine the witness, he prayed a week's time to prepare himself for cross examination; hence, the enquiry was adjourned to 14.09.1988. On 14.09.1988, the second respondent, once again asked for the assistance of lawyer; and again, his request was declined and he was asked to get along with the enquiry. Thereafter, since he was not in a position to cross examine the witness, he himself withdrew from the enquiry and the enquiry was adjourned to 26.09.1988. On that date, the second respondent, once again reiterated his request for assistance of lawyer, which was again turned down by the disciplinary authority. The enquiry was then posted on 08.10.1988 and on that day, the second respondent did not turn up, and it was adjourned to 17.10.1988. On that date, also the

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second respondent did not appear. Then one R. Jayaram was examined and the enquiry was adjourned to 31.10.1988. One D. Mohanan Pillai was examined on 31.10.1988, and the enquiry was adjourned to 07.11.1988. On 7.11.1988, one U. Thoppo was examined. On 16.11.1988, S. Chandrasekaran, Cash Officer of the Guindy Branch was examined. On 22.02.1989, J. Damodaran, Officer of the Guindy Branch was examined. On 20.03.1989, C.J. Paul was examined. The enquiry was continued on 22.06.1989 and on that day the second respondent was present. Finally, the second respondent was given one more opportunity on 26.06.1989 to go through the proceedings for making submissions. Thereafter, the enquiry was closed and on 06.11.1989, the Enquiry Officer submitted his report holding that the second respondent was guilty of the charges. The second show cause notice dated 02.12.1989, proposing punishment of dismissal was issued. He submitted reply dated 22.01.1990 and on 14.03.1990 orders were passed dismissing him from service.

4. Being aggrieved by the order of dismissal, the second respondent raised an industrial dispute, which resulted in I.D.No.77 of 1992 on the file of first respondent- Industrial Tribunal, Chennai. Before the Tribunal, the documents of the second respondent were marked as Exs. W.1 to W.83. Since the second respondent insisted that the question, whether the domestic enquiry was fair and proper should be decided at the first instance, the first respondent Tribunal heard arguments and passed an order on 07.02.1997, holding that in the instant case the Enquiry Officer and the Presenting Officer were not legally trained persons, and therefore, the second respondent cannot insist for the appearance of a lawyer on his behalf. The first respondent/Tribunal further held that failure to give permission for appearance of lawyer on his behalf has not vitiated the enquiry. The first respondent also held that the second respondent did not utilise the opportunities which were afforded to him. The first respondent after finding that the enquiry proceedings were fair and proper, since the enquiry was conducted ex-parte, with a view to give a fair opportunity to the workman, held that the enquiry finding is vitiated. Questioning the same, the State Bank of India has filed W.P.No.15285 of 1997.

5. The second respondent/workman denied the charges levelled against him. According to him, in spite of his specific request on many occasions, he was not permitted to have the assistance of lawyer of his choice to defend him in the enquiry. He did not cross examine PW.1, a Hand-writing Expert and he was not given adequate opportunity in the enquiry proceedings. Most of the documents were furnished either on the date of the enquiry or just on the eve of enquiry. The Tribunal is therefore justified in holding that the enquiry was not fair and proper, and the writ petition is liable to be dismissed.

6. The learned single Judge after finding that the enquiry was held in quick succession, that the workman was not permitted to have an assistance of a lawyer and that workman was not granted adjournments for getting ready for the enquiry, which were main reasons for the workman to abstain from the enquiry, confirmed the conclusion of the Tribunal on the preliminary issue. The learned Judge also arrived at a conclusion that it is a fit case in which the workman should be given an opportunity to defend himself effectively by permitting him to cross examine all the witnesses preferably by engaging a lawyer to assist him

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and confirmed the order of the Tribunal.

7. We heard Mr. V. Karthick, learned counsel for the appellant and Mr. K.V. Ananthakrishnan, learned counsel for the second respondent/workman.

8. In view of the fact that the impugned order relates to conclusion arrived at on a preliminary issue and in the light of our narration of facts in the earlier part of our order, there is no need to refer all the factual matrix once again hereunder. The only point for consideration in this appeal is, whether there was proper and fair enquiry in respect of charges levelled against the second respondent?

9. The details of charges as seen from the charge sheet dated 09.04.1988, issued to the second respondent are as follows:

> "DISCIPLINARY PROCEEDINGS UNDER PARAGRAPH 521 OF THE SASTRY AWARD READ WITH PARAGRAPH 18.28 OF THE DESAI AWARD.
>
> It is reported against you that while you were working as Cashier at our O.T.S. Extension Counter attached to Guindy Branch,
>
> (i)on 26.10.1987, you have received a sum of Rs.3,000/- (Rupees Three Thousand only) on behalf of the Bank from Shri R. Jayaram, Defence Personnel, attached to Officers' Training School, along with the relative voucher, for effecting a Mail Transfer to our Kovilpatti Branch for credit of his Savings Bank Account No.46/8973 and issued the counterfoil immediately. You have intentionally omitted to put this transaction through your Cash Scroll on that day and thus failed to account for the sum of Rs.3,000/- to the Bank and misappropriated the amount.
>
> (ii)Again on 11.11.1987, you have received a sum of Rs.700/- (Rupees Seven Hundred only) on behalf of the Bank from Sub U. Toppo, APTC, Officers' Training School, Madras 600 037, along with the relative voucher, for effecting a Mail Transfer to our Jehangirabad Branch and issued the counter foil immediately. You have intentionally omitted to put this transaction through your Cash Scroll on that day and thus failed to account for the sum of Rs.700/- to the Bank and misappropriated the amount.
>
> (iii)Again on 3.2.1988, you have received a sum of Rs.500/- (Rupees Five Hundred only) on behalf of the Bank from Shri B. Mohannan Pillai, Ground Superintendent, Est. Section Officers' Training School, Madras 600 037, along with the relative voucher, for effecting a Mail Transfer to our Quilon Branch and issued the counterfoil immediately. You have intentionally omitted to put this transaction through your Cash Scroll on that day and thus failed to account for the sum of Rs.500/- to the Bank and misappropriated the

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amount.

(iv) Again on 5.2.1988, you have received a sum of Rs.400/- (Rupees Four Hundred only) on behalf of the Bank, along with the relative voucher, from Shri C.J. Paul, G.D. Goy. Officers' Training School, Madras 600 037, for effecting a Mail Transfer to our Trichur Branch and issued the counterfoil immediately. You have intentionally omitted to put this transaction through your Cash Scroll on that day and thus failure to account for the sum of Rs.400/- to the Bank and misappropriated the amount.

2. Your above acts of misappropriation, involving the Bank in serious, loss are acts, which are prejudicial to the interest of the Bank and if proved, would amount to acts of gross misconduct under Section 521-4(j) of the Sastry Award read with paragraph 18.28 of the Desai Award."

10. The second respondent submitted his explanation. Since the explanation offered was not acceptable and the act of misappropriation involving serious loss to the Bank is an act which is prejudicial to the interest of the Bank and if proved would amount to an act of gross misconduct under Section 521-4(j) of the Sastry Award read with paragraph 18.28 of the Desai Award, an enquiry was ordered.

11. The enquiry was held at Guindy P.S. on 22.08.1988 and the first sitting commenced on the same day, i.e., on 22.08.1988. The second sitting was on 29.08.1988; third sitting on 12.09.1988; fourth sitting on 14.09.1988; 5th sitting on 26.09.1988; 6th sitting on 08.10.1988; 7th sitting on 17.10.1988; 8th sitting on 31.10.1988; 9th sitting on 07.11.1988; 10th sitting on 16.11.1988; 11th sitting on 22.02.1989; 12th sitting on 20.03.1989; 13th sitting on 22.06.1989; 14th sitting on 26.06.1989 and finally the Enquiry Officer submitted his report on 06.11.1989. A perusal of the enquiry report reveals that the second respondent K. Ibrahim, Cashier, while he was attached to O.T.S. Extension Counter under the control of Guindy Branch received over the counter certain sums of money for effecting Mail Transfer from certain persons on certain days and issued counter foils committing the Bank for those remittances. However, he failed to account for the monies so received over the counter in the books of the Bank on the same dates and mis-appropriated the same. 63 documents marked as Exs.P.1 to Ex.P.63 in original, relating to the charges against the second respondent were produced by the Presenting Officer and the same were shown to the delinquent and copies of the said 63 documents were provided to him on 29.08.1988.

12. One M.Kasi, Scientific Assistant, Forensic Science Department, was examined as PW.1. He identified the document No.177/88 dated 01.06.1988 as the Expert's report from his Department which was marked as Ex.P.1 and stated that the said report was based on the original exhibits marked viz., Exs.P.2 to P.40. He also stated that the questioned documents marked as Q.1 to Q.6, tally with admitted genuine signatures, initials and writings marked as S.1 to S.80. It is further seen that the said Kasi, PW.1 was examined in the presence of the second

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respondent/delinquent employee. He was available for cross examination. The second respondent was given an opportunity to cross examine PW.1. As stated earlier, the only objection on the part of the workman/second respondent was that he was not in a position to conduct enquiry, particularly to cross examine PW.1 and he sought assistance of a lawyer. It is not in dispute that neither the Enquiry Officer nor the Presenting Officer is a trained law graduate. It is also not in dispute that there is no bye-law/circular/guidelines of the State Bank of India enabling the second respondent to have assistance of a lawyer in a enquiry of this nature.

13. The learned counsel for the writ petitioner has also brought to our notice the Sastry Award as well as Bye-partied Settlement, which also prohibits engaging a lawyer in an enquiry where the Enquiry Officer and the Presenting Officer are not law graduates or conversant with the legal aspects. In this regard it is useful to refer the recent decision of the Apex Court in the case of Management of National Seeds Corporation Ltd., vs. K.V. Rama Reddy reported in 2006 (4) LLN 609, wherein, in almost similar circumstances, the Hon'ble Supreme Court has observed,

> " 7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation (See N.Kalindi v. Tata Locomotive and engineering Company Ltd., (AIR 1960 SC 914) Dunlop Rubber Company (India) Ltd., vs. Workmen (AIR 1965 SC 1392), Crescent Dyes and Chemicals Ltd., v. Ram Naresh Tripathi (1993 (1) L.L.N. 761) and Indian Overseas Bank vs. Indian Overseas Bank Officers' Association and another (2002 (4) L.L.N. 32).
>
> 8. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. ..... "

It is clear from the above decision, unless there is a provision in the Rules or Regulations or Standing Orders, specifically recognising such right and providing for such representation, no employee can claim assistance or representation by a legally trained person as of right. We have already referred to the admitted factual position that there is no such enabling provision applicable to the parties.

14. The other decision cited by the learned counsel for the writ petitioner is 2005 (2) LLJ 610 (Chairman and Managing Director, Hindustan Teleprinters Ltd., Chennai vs. M. Rajan Isaac), wherein the Division Bench of this Court has held,

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> "12. The general rule is that in the absence of rules an employee has no right to seek for assistance of a lawyer in the departmental enquiry. Ordinarily the principles of natural justice do not postulate a right to be represented or assisted by a lawyer in the departmental proceedings. But there is an exception and the question would be different if the delinquent officer or the workman, as the case may be; is pitted against a legally trained person in the departmental enquiry and the delinquent officer or the workman is not that much familiar with the legal procedures involved in the departmental enquiry. When a presenting officer is stated to be a man of law, justice would require that the officer or workman who has no legal background is represented through a lawyer. Though the quasi-judicial authorities holding domestic enquiries are not governed by strict and technical rules of evidence, yet they are governed by the rule of equity and natural justice and they must act in fairness. This concept is to ensure that there is no failure of justice. ..."

15. No doubt, Mr. K.V. Ananthakrishnan, learned counsel appearing for the second respondent-workman relied on a Division Bench decision of Calcutta High Court in the case of M/s. India Photographic Co. Ltd., vs. Saumitra Mohan Kumar reported in 1984 I LLJ 471, and submitted that in a matter of this nature, representation by a lawyer is permissible. We perused the decision of the Calcutta High Court. In para 14, the Division Bench pointed out that Court should ordinarily discourage legal representation in domestic enquiry, and further stated that it is open to a reviewing court to consider whether the facts constitute an exceptional case which demands that legal representation should be allowed as otherwise there may be failure of the enquiry. In the case on hand, we have already reiterated that there is no specific provision either in the Rules/Regulations/Standing Orders or in bye-partied settlement or Sastry award.

16. It is true that PW.1 is an expert and he was examined in the presence of the second respondent. In other words, during the entire chief examination, the workman was very well present. In order to get clarification/details from anyone, including a lawyer, the Enquiry Officer granted sufficient time and adjourned the enquiry. However, admittedly, even after providing sufficient time, the second respondent did not cross examine PW.1. In the earlier part of our order, we referred to the fact that the workman was permitted to have the assistance of any member or office bearer of a registered Trade Union. The fact remains, he failed to utilise the same. In those circumstances and in view of the factual details and also of the fact that he was granted adequate time to get assistance from anyone, including his lawyer with regard to the evidence of PW.1, we are unable to accept the conclusion arrived at by the Tribunal as well as the learned single Judge.

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17. It is relevant to point out that out of 14 sittings, he participated in seven sittings. Even in the 14th sitting, the workman has admitted that he had gone through the proceedings recorded on 08.10.1988, 17.10.1988, 31.10.1988, 07.11.1988, 16.11.1988 and 20.03.1989. It is also available from the enquiry proceedings that the Enquiry Officer has informed the second respondent that if he so desires, he can very well bring his own handwriting expert as a defence witness. On going through the materials available in the enquiry proceedings and in view of the fact that the workman is not entitled assistance of a lawyer of his choice and also of the fact that in the enquiry he was afforded sufficient time to go through the evidence, particularly the evidence of PW.1, we are unable to agree with the conclusion of the Tribunal as well as the learned single Judge. On the other hand, we are of the view that in spite of affording sufficient opportunity, the second respondent failed to utilise the same.

18. The learned counsel appearing for the second respondent/workman by drawing our attention to the decision of the Division Bench of this Court in the case of Management of Engine Valves Ltd. vs. Presiding Officer, Industrial Tribunal, Madras & another reported in 1996 (1) LLJ 566 submitted that, normally no writ petition is maintainable in respect of finding rendered in a preliminary issue. In the said decision, the Division Bench, in the concluding paragraph has observed,

> ".... We may point out here that the fact that this Court does not interfere with such preliminary order and keeps all the contentions open, is only intended to ensure that there is no delay caused in the disposal of the dispute by the Tribunal or Labour Court and it does not in any way affect the right of the Management to challenge the validity of the order, in the event it become necessary for it to challenge the award. ..."

Absolutely, there is no dispute with regard to the above said proposition. In order to facilitate both parties to get relief, normally no court would entertain writ petition against the order passed in a preliminary issue. But however, in view of the peculiar factual circumstances and as pointed out above that there is no specific provision either in the bye-laws, circular, guidelines, enabling the workman to have the legal assistance, and having participated on several sittings, the workman abandoned the enquiry after certain stage, and copies of documents were also either supplied or allowed to be perused by the workman, and already adequate opportunity was given to him, we are of the view that it is an exceptional case and the Management-Bank is justified in approaching this Court even against the order passed in a preliminary issue. Accordingly, we reject the said contention also.

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19. In the light of what is stated above, we are unable to accept the reasonings that weighed the Industrial Tribunal as well as the learned single Judge and set aside the same. Consequently, the writ appeal is allowed. No costs. In view of our conclusion, the Industrial Tribunal, Madras, first respondent herein is directed to complete the proceedings in I.D. No.77 of 1992 and pass orders in accordance with law within a period of three months from the date of receipt of copy of this order after affording opportunity to both parties. In view of the disposal of the appeal, connected miscellaneous petition is closed.

kh

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer
Industrial Tribunal
Madras.

+1 cc to Mr.K.V.Anantha Krishnan, Advocate Sr.No.22458.

+1 cc to M/s.T.S.Gopalan, Advocate Sr.No.22697.

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